***THE HON'BLE SRI JUSTICE V.V.S. RAO**

–

–

+WRIT PETITION No.18416 OF 2003

%Dated 02-08-2004

Between:

1 M.Srinivasa Charyulu s/o M.V.N.Charyulu,
R/o 2-6-25, Ramnagar, Sangareddy, Medak District.
2 M.Ramakrishna Charyulu, s/o. M.V.N. Charyulu,
r/o. Ramgiri, Nalgonda Town & District.

..... PETITIONER(S)

AND

1 District Registrar (Collector U/s 41-A of Indian Stamp

Act, 1899), Nalgonda District, Nalgonda.
2 Sub Registrar, Huzurnagar, Nalgonda District.

...RESPONDENT(S)

! Counsel for Petitioners: Mr. M.Venkat Ram Reddy, Advocate

^Counsel for Respondents: G.P. for Revenue (G).

<GIST:

> HEAD NOTE:

? Cases referred

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SECOND DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 18416 of 2003

Between:

1 M.Srinivasa Charyulu s/o M.V.N.Charyulu,

R/o 2-6-25, Ramnagar, Sangareddy, Medak District.
2 M.Ramakrishna Charyulu, s/o. M.V.N. Charyulu,
r/o. Ramgiri, Nalgonda Town & District.

..... PETITIONER(S)

AND

1 District Registrar (Collector U/s 41-A of Indian Stamp

Act, 1899), Nalgonda District, Nalgonda.
2 Sub Registrar, Huzurnagar, Nalgonda District.

...RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction or writ specially writ of Certiorari by quashing the Proceedings No.100/704/1990 dated 30-06-2003 on the file of Ist respondent by declaring the same as illegal, arbitrary, contrary to Sub Section (1) of Section 41-A of Indian Stamps Act, 1899

Counsel for the Petitioner:MR.M.VENKAT RAM REDDY, Advocate

Counsel for Respondents 1 and 2 : ASSISTANT G.P. FOR REVENUE

The Court made the following :

-

-

-

-

-

-

-

-

-

O R D E R :

The petitioners herein have purchased the land admeasuring Acs.14-00 in Survey No.197 of Huzurnagar village and Mandal, Nalgonda District, from one Mr.Venkata Rangacharyulu and others for a consideration of Rs.3,332/-. They paid the stamp duty of Rs.380/- and the sale was registered under Document No.704/90, dated 19-6-1990 in Book No.1 at the office of the second respondent. By order in proceedings No.100/704/1990m dated 30-6-2003 the first respondent directed that the petitioners shall pay an amount of Rs.19,320/- towards the deficit stamp duty in respect of the said document on the ground that the market value shown in the document works out to Rs.1,69,400/- and that the stamp duty chargeable is Rs.18,640/- and the registration fee payable is Rs.1,100/-. This order is assailed in the present writ petition. This Court admitted the writ petition and passed orders of stay prohibiting further steps in the matter. The matter was finally heard on 30-7-2004 with the consent of the parties at interlocutory stage when W.V.M.P.No.3686 of 2003 filed by the respondents was listed before this Court and the learned Assistant Government Pleader for Revenue (General) was directed to produce the records.

The learned Assistant Government Pleader has produced the records connected with the proceedings impugned in the writ petition. A perusal of the same would support the averments in the counter affidavit that the action was initiated under Section 41-A of the Indian Stamp Act,1899 (for brevity 'the Act') by issuing a notice to the petitioners on 25-11-1994, and therefore, the action initiated is valid.

The only submission made by the learned counsel for the petitioners is that under Section 41-A of the Act, any order for recovery of deficit stamp duty has to be initiated within a period of five years and as the impugned order is issued long thereafter on 30-6-2003, the action must be held to be illegal and unauthorized.

Section 41-A of the Indian Stamp Act,1899 reads as under:

41-A. Recovery of Stamp Duty not levied or short levied:-

(1) Whereafter the commencement of the Indian Stamp (Andhra Pradesh Amendment) Act,1986, any instrument chargeable with duty has not been duly stamped and registered by any Registering Officer by mistake and remarked as such by the Collector or any audit party, the Collector may, within five years from the date of registration serve a notice on the person by whom the duty was payable requiring him to show cause why (the amount required to make up the deficit stamp duty should not be collected from him along with a penalty of three times of the deficit stamp duty.)

Provided that where the non-payment was by reason of fraud, collusion or any willful mis-statement or

suppression of facts or contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of duty, the Collector may within ten years from the date of registration serve a notice on such person to show cause why (the amount required to make up the deficit stamp duty should not be collected from him along with a penalty of three times of the deficit stamp duty.)

(2) The Collector or any officer specially authorized by him in this behalf shall, after considering the representation if any, made by the person on whom notice is served under sub-section (1), determine by an order, (the amount of duty and the penalty) due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount as determined. On payment of the (amount) the Collector shall add a certificate under Section 42.

(3) Any person aggrieved by an order under sub-section (2) may prefer an appeal before the (Chief Controlling Revenue Authority) Andhra Pradesh, Hyderabad within three months from the date of such order.

(4) Any (amount) payable under this section shall be recovered as an arrear of land revenue).

A plain reading of sub-section (1) of Section 41-A of the Act, reveals that when an instrument chargeable with stamp duty has not been duly stamped and registered by any registering officer, the Collector may within five years from the date of registration, serve a notice on the person by whom duty is payable, to show cause why proper duty should not be collected from him. The necessary requirement of law is to issue notice within five years and provision does not bar the Collector to pass an order after expiry of five years. Therefore, I do no see any infirmity in the order passed. Further, as rightly submitted by the learned Assistant Government Pleader, as the order passed by the Collector under Section 41-A (1) of the Act, an appeal would lie under sub-section (3) thereof to the Chief Controlling Revenue Officer, within a period of three months from the date of the order. The order was passed by the first respondent on 30-6-2003 and this writ petition was filed on 29-8-2003. Therefore, it would be in the interest of justice, to give liberty to the petitioners to file an appeal under Section 41-A (3) of the Indian Stamp Act, 1899, within a period of three weeks from the date of receipt of a copy of this order. The Appellate Authority may entertain the appeal and pass appropriate orders in the matter.

The writ petition, with the above observations and directions, is disposed of. No costs.

_____

(V.V.S. RAO, J.)

Dt. 02-08-2004.

Msr.

NOTE : L.R. Copy marked.

B/o.

Msr.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 District Registrar (Collector U/s 41-A of Indian Stamp

Act, 1899), Nalgonda District., Nalgonda.

2 Sub Registrar, Huzurnagar, Nalgonda District.

3. 2CCs to Government Pleader for Revenue (G), High Court

of A.P., Hyderabad.(OUT).

4. 2CD copies

5. 8 L.R. Copies.

6. The Under Secretary, Union of India, Ministry of Law, Justice &

Company Affairs, New Delhi.

7. The Secretary, A.P. Advocates Association Library,

High Court Buildings, Hyderabad.

8. Hon’ble Sri Justice V.V.S.Rao, High Court of A.P., Hyderabad,

for His Lordship’s perusal.

HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.18416 of 2003

Dt.02-08-2004.

(Msr)